Montana State Legislature

2015 SESSION

ADDITIONAL DOCUMENTS
May include the following:

Business Page
[Signed by Chairman]
Roll Call
Standing Committee Reports
Tabled Bills
Fiscal Reports
Rolls Call Votes
Proxy Forms
Visitor Registrations

***Any other documents, which were submitted after the committee hearing has ended and/or was submitted late [within 48 hours], regarding information in the committee hearing.**
***Witness Statements that were not presented as exhibits.**

BUSINESS REPORT

MONTANA SENATE
64th LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Wednesday, April 8, 2015
Place: Capitol

Time: 8:00 A.M.
Room: 303

BILLS and RESOLUTIONS HEARD:

HB 202 - Allow for optional DUI prevention contribution on vehicle registration form - Rep. Bryce Bennett
HB 425 - Constitutional amendment to define person - Rep. Matthew Monforton
HB 430 - Provide for an interim judicial redistricting commission - Rep. Steve Fitzpatrick
HB 433 - Providing a tuition tax credit for K-12 education - Rep. Seth Berglee
HB 488 - Generally revise DUI laws - Rep. Keith Regier
SJ 24 - Interim study on sexual assault - Sen. Diane Sands

EXECUTIVE ACTION TAKEN:

HB 202-Tabled
HB 430-Be Concurred In, Motion Withdrawn
HB 433-Be Concurred In/Tied, bill remains in the committee
HB 488-Be Concurred In, Motion Withdrawn
SJ 24-Do Pass
HB 89-Be Concurred In
HB 425-Table/Tied, bill remains in the committee

Comments:

SEN. Scott Sales, Chair

MONTANA STATE SENATE
2015 JUDICIARY COMMITTEE
ROLL CALL

DATE: 4/8/15

NAME	PRESENT	ABSENT/ EXCUSED
CHAIRMAN, SENATOR SCOTT SALES	/	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	/	
SENATOR DIANE SANDS	/	
SENATOR ROBYN DRISCOLL	/	
SENATOR KRISTEN HANSEN		/
SENATOR JEDEDIAH HINKLE	/	
SENATOR DOUG KARY	/	
SENATOR CLIFF LARSEN	/	
SENATOR MARY MCNALLY	/	
SENATOR MARY SHEEHY MOE	/	
SENATOR NELS SWANDAL	/	
SENATOR CHAS VINCENT	/	

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COMMITTEE FILE COPY

BILL TABLED NOTICE

SENATE JUDICIARY COMMITTEE

The **SENATE JUDICIARY COMMITTEE** TABLED

HB 202 - Allow for optional DUI prevention contribution on vehicle registration form - Rep. Bryce Bennett

by motion, on **Wednesday, April 8, 2015** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

(For the Committee)

(For the Secretary of the Senate)

1:20 / 4/8
(Time) (Date)

April 8, 2015 (12:24pm) Pam Schindler, Secretary Phone: 444-4618

COMMITTEE FILE COPY

BILL VOTE TIED - REMAINS IN COMMITTEE

SENATE JUDICIARY COMMITTEE

The vote in **SENATE JUDICIARY COMMITTEE** for bill **HB 425 - Constitutional amendment to define person - Rep. Matthew Monforton**
HB 433 - Providing a tuition tax credit for K-12 education - Rep. Seth Berglee
was tied on **Wednesday, April 8, 2015** and the bill remains in committee. (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

(For the Committee)

(For the Secretary of the Senate)

1:20 / 4/8
(Time) (Date)

April 8, 2015 (12:25pm) Pam Schindler, Secretary Phone: 444-4618

SENATE STANDING COMMITTEE REPORT

Madame President:

We, your committee on **Judiciary** report that **Senate Joint Resolution 24** (first reading copy -- white) **do pass**.

Signed: _____
Senator Scott Sales, Chair

- END -

Committee Vote:
Yes 11, No 1
Fiscal Note Required __

SJ0024001SC.spt

SENATE STANDING COMMITTEE REPORT

Madame President:

We, your committee on **Judiciary** report that **House Bill 89** (third reading copy -- blue) **be concurred in**.

Signed: _____
Senator Scott Sales, Chair

To be carried by Senator Mary Sheehy Moe

- END -

Committee Vote:
Yes 7, No 5
Fiscal Note Required _X_

HB0089001SC16522.spt

MONTANA STATE SENATE

ROLL CALL VOTE

2015 JUDICIARY COMMITTEE

DATE 4/8/15 BILL NO HB 22 MOTION NO. 1

MOTION: Table

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT	—		—
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR DIANE SANDS		—	
SENATOR CLIFF LARSEN		—	
SENATOR ROBYN DRISCOLL		—	
SENATOR MARY MCNALLY		—	
SENATOR MARY SHEEHY MOE	—	.	
SENATOR KRISTEN HANSEN	—		—
SENATOR JEDEDIAH HINKLE	—		
SENATOR DOUG KARY	—		
SENATOR NELS SWANDAL	—		
CHAIRMAN, SENATOR SCOTT SALES	—		

8/4

MONTANA STATE SENATE

ROLL CALL VOTE

2015 JUDICIARY COMMITTEE

DATE 4/8/15 BILL NO HB 433 MOTION NO. 1

MOTION: Be Concurred In

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT		—	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER	—		
SENATOR DIANE SANDS		—	
SENATOR CLIFF LARSEN		—	
SENATOR ROBYN DRISCOLL		—	
SENATOR MARY MCNALLY		—	
SENATOR MARY SHEEHY MOE		—	
SENATOR KRISTEN HANSEN	—		—
SENATOR JEDEDIAH HINKLE	—		
SENATOR DOUG KARY	—		
SENATOR NELS SWANDAL	—		
CHAIRMAN, SENATOR SCOTT SALES	—		

6/6

MONTANA STATE SENATE

ROLL CALL VOTE

2015 JUDICIARY COMMITTEE

DATE 4/8/15 BILL NO HB 89 MOTION NO. 1

MOTION: Reconsider

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT		—	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER		—	
SENATOR DIANE SANDS	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR MARY MCNALLY	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR KRISTEN HANSEN	—		—
SENATOR JEDEDIAH HINKLE		—	
SENATOR DOUG KARY		—	
SENATOR NELS SWANDAL	—		
CHAIRMAN, SENATOR SCOTT SALES		—	

7/5

MONTANA STATE SENATE
ROLL CALL VOTE
2015 JUDICIARY COMMITTEE

DATE 4/8/15 **BILL NO** HB425 **MOTION NO.** 1

MOTION: Table

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR CHAS VINCENT		—	
VICE CHAIRMAN, SENATOR JENNIFER FIELDER		—	
SENATOR DIANE SANDS	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROBYN DRISCOLL	—		
SENATOR MARY MCNALLY	—		
SENATOR MARY SHEEHY MOE	—		
SENATOR KRISTEN HANSEN		—	—
SENATOR JEDEDIAH HINKLE		—	
SENATOR DOUG KARY		—	
SENATOR NELS SWANDAL	—		
CHAIRMAN, SENATOR SCOTT SALES		—	

6/6

SENATE PROXY

I, Senator CHAS VINCENT, hereby authorize Senator Scott Sales to vote my proxy before the Senate JUDICIARY meeting held on 4/8, 2015.

Chas Vincent
Senator Signature (Sen. Vincent)

4/8/15
Date

Said authorization is as follows: *(mark only one)*

- ☒ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

Bill No./Amendment No.	Aye	No
HB 202 Table	X	

SENATE PROXY

I, Senator K. Hansen, hereby authorize Senator J. Fiedler to vote my proxy before the Senate meeting held on 4/8, 2015.

Senator Signature

4/8/15
Date

Said authorization is as follows: *(mark only one)*

- [X] All votes, including amendments.
- [ ] All votes as directed below on the listed bills, and all other votes.
- [ ] Votes only as directed below.

Bill No./Amendment No.	Aye	No
HB 202 Table	X	
HB 433 Reconsider	X	
SB 24 Do Pass	X	
HB 89 Reconsider	X	
HB 425 Table		X

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Wednesday, April 8, 2015
HB 202 - Allow for optional DUI prevention contribution on vehicle registration form
Sponsor: **Rep. Bryce Bennett**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
MARY CATHRYN BEEBY	SELF	X		
Virginia Braun	Myself - DUI Task Force member	X		
James Quillin	Self	X		
Sarah Garcia	DOT. MVD			X
REBECCA SHUMEVANT	MCSC & MADD	X		
Ronda Wiggers	Mt City Trsr Assoc		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Wednesday, April 8, 2015
HB 488 - Generally revise DUI laws
Sponsor: **Rep. Keith Regier**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Rebecca Studebant	MCSC + MADD	✓		
[illegible]	[illegible]	[illegible]		
Jessica Luther	Assn of MT Troopers	X		
Jon Bennion	DOJ	X		
Perry Dodson	MCAA [illegible]	X		
Mike Dillon			X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Wednesday, April 8, 2015
HB 430 - Provide for an interim judicial redistricting commission
Sponsor: **Rep. Steve Fitzpatrick**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Shantil Sieggras	MT Assoc. of Counties	X		
Mary "Marty" Phippen	Mt Assn. of Clks of Dist Ct	X		
John W. Larson	4th Judicial Distrct	X		
Jon Bennion	DOJ	X		
Bruce Spencer	State Bar MT	X		
Mike Tellam	MTLP		X	
Mike McGrath	Sup Court	X		
Beth McCoy	Sup Court	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Wednesday, April 8, 2015
HB 425 - Constitutional amendment to define person
Sponsor: **Rep. Matthew Monforton**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Wm D. Wise M.D.	self	✓		
Mark Cromer	self	✓		
Ed Hallam	self	✓		
Dwight Goble	self	✓		
JC "Bobby" Lane	self	✓		
James Quillin	self	✓	BF	
Maggie Moran	NARAL MT		✓	
LYLE SEITHBAUER	SELF	✓		
Susan Bebin	self	✓		
ROBERT WEGNER	SELF	X		
John S.	self	✓		
George Hudson	"	✓		
Julie Dockery	self	✓		
Bethany Curtis	self	X		
Garett Bacon	self	X		
Martha Stahl	PP Montana		✓	
Kari Kerbs Kyle Burk	Self	✓		
Judy Tankink	self	✓		
Rudy Tankink	self	✓		
Bartley McElwain	self	X		
Paul McElroy	self	X		
Remington McElroy	Self	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE

Visitors Register

2015 JUDICIARY COMMITTEE

Date 4/8/15

Bill No. HB 425 **Sponsor(s)** Rep Matthew Monforton

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Carolyn Truscott	Self	✓		
920 Silverette St. Helena William Truscott	self	✓		
Kim Abbott	MHRN		X	
Sarah Howell	MT Women Vote		X	
Susan C. Peters	self	✓		
Rhonda S. Burnett	self	X		
Janice M. Smith	self	✓		
Debra Brown PO Box 470144, Winston	self	✓		
Annie Bukal	self	✓		
Dawn R. Mahler	Self	✓		
Jorge Quintana				✓
Robin Turner	MCADSV		✓	
Dianne Wolfman	Self	✓		
JOAN EMBRY	SELF	✓		
Miriam J. Barker	self	✓		
Charles M. Barker	self	✓		
Terry L. Rowe	Self	✓		
Wes Rowe	Self	✓		
Niki Zupanic	ACLU		✓	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Wednesday, April 8, 2015
HB 433 - Providing a tuition tax credit for K-12 education
Sponsor: **Rep. Seth Berglee**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Ed Holland	self	X		
[illegible]	SELF	X (struck out)	X (struck out)	
Judy Tankink	self	X		
Rudolf Tankink	self	X		
Robert Filipovich	self		X	
ERIC FEAVER	MSAMFT		[illegible mark]	
Madalyn Quinlan	OPI		✓	
Dianne Burke	MQEC		X	
Pat Audet	SAM		X	
Patricia Decker	self		X	
Kim Abbott	MHRN		X	
Sarah Howell	MT Women Vote		X	
Mila Fellows	MTLP	X		
Niki Zupanic	ACLU		✓	
Jim Molloy	Governor Bullock		X	
Kari Beebe	Self	X		
Miriam Barker	self	X		
Charles M. Barker	Self	X		
Heather O'Loughlin	MBPC		X	
Jim Smith	MREA		X	
Susie Hamilton	Self		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register
SENATE JUDICIARY COMMITTEE

Wednesday, April 8, 2015
SJ 24 - Interim study on sexual assault
Sponsor: **Sen. Diane Sands**

PLEASE PRINT

Name	Representing	Support	Oppose	Info
Kevin McRae	Montana University System	X		
MARK MURPHY	MCAA MACOP	X		
Jen Marshall	MUS Students	X		
Sam Sandstrom	MUS Students	X		
Maggie Moroun	NARAL MT	X		
ROBERT WELZEL	MONTANA CITIZEN		X	
Bethany Curtis	citizen		X	
Robin Turner	MCADSV	✓		
Linda Gill	Missoula County			
Jim Smith	MSPOA	X		
Garrett Lankford	ASMSU	✓		
Patricia Decker	Self Red Lodge DSVS	✓		
Tom Bennion	DOJ	✓		
Kim Abbott	MHRN	X		
Sarah Howell	MT Women Vote	X		
Haocheng Wang	ASUM	X		
Mike Mellows	Self		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Additional Documents
SENATE: Judiciary
Date: 4/8/15
Bill No. HB430

RANDAL & WANDA SPAULDING
803 1st Street West
Roundup, Montana 59072
(406) 323-1481 (Home)
(406) 855-9558 (Cell)

April 6, 2015

Montana Senate
Attn: Senator Nels Swandal
P.O. Box 200500
Helena, Montana 59620-0500

Re: HB 430

Dear Sir,

I am currently the presiding judge for the Montana Fourteenth Judicial District which is comprised of Musselshell, Golden Valley, Wheatland, and Meagher counties. I am writing to express my grave concerns over HB 430 which the Senate Judiciary Committee is slated to hear on the morning of April 8, 2015. The bill as submitted proposes to create an interim judicial study commission to study the judiciary statewide over the next two years and report and make recommendations for possible redistricting to the next legislature. While at first blush the bill may appear reasonable, and the Supreme Court Administrator's Office is certainly touting it as such, I have reason to believe (along with many if not most of the rural court judges) that there is a hidden agenda behind the bill. A little history may be in order.

In 2002, the State of Montana assumed control of the courts statewide. Shortly afterward a State District Court Council was formed in order to assist and advise the Chief Justice and to implement State policy throughout the judiciary. Then Supreme Court Administrator Louise Menzies along with members of the District Court Council approached the Montana Judges' Association about conducting a workload assessment whereby each judge would be required to input their daily activities and the time devoted to each into a computer program which would later be tallied and put in a report for comparison across the State. The stated purpose of the study was so that the information generated by the report could be presented to the legislature in order to justify additional funding for the judiciary as a whole. Because of attempts in the past, several judges (mostly rural) expressed concern that the report might be utilized to attempt to implement redistricting statewide under the auspices of equalizing workload. We were assured by the Court Administrator and Council that this would not be the case. Long story short, the Court Administrator and District Court Council through HB 430 are attempting to do the very thing that they promised they would not (i.e. utilizing the workload study reports generated through the candid and honest participation by judges in order to attempt to propose redistricting and the perceived equalization of judicial workloads statewide). However, there are several problems with their approach.

First, the workload study assessments were and are woefully inadequate. For example, while the assessments take into account the number of case filings in a district, they do not include the numerous out of district cases that those judges, mostly rural, preside over statewide. The assessments also fail to fully consider the effects of large geographical districts such as mine on workload and available resources. In addition, recent studies indicate that 74% of cases in my district involve at least one self-represented litigant (i.e. without an attorney). While I am all for access to the courts including access by those that cannot afford to retain an attorney, the effect has, contrary to the Court Administrator's testimony this session, been devastating upon my court and my workload. Unlike the urban courts, I do not have a self-help law clinic to assist these folks in preparing and filing their paperwork or directing them through the process. Nor do I have specialty courts (i.e. drug courts, family courts, veterans courts), a standing master, or even a law clerk to divert these folks to for assistance like most all of the urban districts which resources, incidentally, are not included as such in the workload assessments either. There is only me.

Second, though there was a fall meeting of the Montana Judges' Association in October of last year and HB 430 most certainly must have been on her radar, the Court Administrator who presented did not discuss much less make mention of the bill to the membership, nor has she done so to date. This has damaged the trust that previously existed between the judges and the Court Administrator's office and driven a wedge between the urban and rural judges, neither of which are in the judiciary's best interests.

Third, the presentation of HB 430 under the circumstances has been very divisive amongst the urban and rural judges statewide. Though the Court Administrator is apparently attributing the general dissatisfaction amongst rural judges as complaints by a select few who just do not want to have to work harder, this ignores the fact that the dissatisfaction is virtually universal amongst the rural judges who, contrary to the Court Administrator's remarks, already work very hard to serve the litigants in their districts.

Lastly, the net effect of the passage of HB 430 will be the further disenfranchisement of rural (largely eastern) Montanans from the justice system. That is, the study commission under pressure from the Court Administrator and others, will undoubtedly recommend that redistricting occur in order to equalize perceived caseloads amongst districts. This in turn will necessarily mean that rural and single judge districts will be eliminated, enlarged, or subsumed into larger districts with larger caseloads being foisted off on rural and single judge districts thereby further delaying justice for citizens in those districts.

In closing, if the urban districts require more resources (and I agree that they do), allocate additional resources for those districts. Do not foist their burgeoning caseloads off on already legitimately hard working and busy rural judges at their constituents' expense. PLEASE vote no on HB 430.

Respectfully Yours,

Randal I. Spaulding

Office of
The Board of County Commissioners
Granite County

Post Office Box 925, Philipsburg, Montana 59858-0925
Telephone 406-859-7022 Assistant 406-859-7023 Fax 406-859-3817 Web Site www.co.granite.mt.us

Barton C. Bonney, Chairman
P O Box 701
Philipsburg MT 59858

Scott C. Adler, Commissioner
750 Frontage Road West
Drummond MT 59832

Bill Slaughter, Commissioner
P O Box 96
Hall MT 59837

March 25, 2015

Senator Gene Vuckovich
Montana Senate
Capitol Station
Helena MT 59620

Senate Judiciary Committee
Senator Scott Sales, Chair
Montana Senate
Helena MT 59620

RE: HB430 – Interim Judicial Redistricting Commission

Dear Senator Vuckovich, Senator Sales and Judiciary Committee Members:

We are writing to express our grave concerns regarding HB430 and the effect it is likely to have on the existing Judicial Districts in Montana, particularly the Third Judicial District consisting of Granite, Deer Lodge and Powell Counties.

Rural Judicial Districts deserve to have the benefit of a judge with connections to the communities, culture and people which they serve. Smaller communities would be disenfranchised by adding them to larger urban areas and these rural communities would be heavily outweighed strictly by the number of voters in urban areas.

We feel strongly that HB430 is a threat to the autonomy of small Judicial Districts and it is not in the best interest of the people of Granite County. People in rural districts deserve to have a human judge, not a television screen, hear criminal and civil cases regarding their life, liberty and property.

Our fear is that a panel of seven people will recommend that smaller Judicial Districts be combined with larger urban areas. While available statistics may indicate heavy caseloads in

urban areas, an obvious solution would be to add more judges in those areas. However, we feel strongly that the smaller Judicial Districts should not suffer in the process.

In recent years District Judges have wisely been added in some rural areas to provide local judicial service to those people. However, we cannot be certain that a commission of seven people will recommend that same type of reasonable solution.

It must always be remembered that the Judicial Branch of Montana government is not just a state agency, but it is an entire branch, fully one-third of state government, with multiple constitutional mandates.

For the reasons outlined above, we respectfully request that you vote against HB430 to insure the preservation and the autonomy of the rural Judicial Districts in Montana.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
OF GRANITE COUNTY

Barton C. Bonney, Chairman

Scott C. Adler, Commissioner

Bill Slaughter, Commissioner

cc: Representative Kathy Swanson

Additional Documents

SENATE: Judiciary

Date: 4/8/15

Bill No. HB430

STATE OF MONTANA
THIRD JUDICIAL DISTRICT COURT

Ray J. Dayton
District Judge

Deer Lodge County Courthouse
800 South Main
Anaconda, Montana 59711
(406) 563-4044
Fax (406) 563-7015

April 7, 2015

Montana Senate Judiciary Committee
Senator Scott Sales, Chairman
c/o Pam Schindler
via fax 1-406-444-4875
and email pschindler@mt.gov

RE: HB 430

Dear Senators:

I proudly serve the citizens of Montana as the District Judge of the Third Judicial District. I was born and raised in Anaconda, attended both Montana Universities and practiced law in Southwest Montana for 25 years before being elected Judge by the citizens of Deer Lodge, Powell and Granite Counties in 2006. I now consider myself a citizen of the Third Judicial District.

Consistent with my oath, I have and will continue to strive to serve and improve the Judicial Branch of Montana's government. I fervently believe that those with the power and responsibility to influence the shape of Montana's Judiciary, in each branch of government, must exercise that authority with regard to assuring that the Judiciary continues, no less than the legislature, to reflect Montana's diversity of attitudes, lifestyles and culture. It is that very diversity and opportunity for autonomy throughout the communities of the state that creates the texture and strength of fiber of Montana.

While the concept of redistricting, considered in a vacuum, may seem benign enough that the formation of a study commission might likewise seem harmless, the context within which HB 430 is proposed causes concern within many of us who feel a responsibility to the Montanans we serve. While the statistics recently assembled evidence that most Districts are functioning at or above their projected capacities, some Districts, particularly the population centers, have caseloads evidencing the need for additional judges.

Ray J. Dayton
District Judge

For those of us who believe that the solution to address the need for additional resources in some Districts should not risk the destruction of others, the creation of a study commission is not a step in a direction the judiciary should be headed. No "rural" judges favor redistricting or a study. I believe that virtually no "urban" judges want to address their needs at the risk of destroying the district court level of Montana's judiciary as we know it.

The citizens of Montana want to continue to elect judges from within their communities. They want the cases that arise within their communities to be heard by men and women they know and who know them. They definitely want a judge in their courthouse and not just a talking head on a flat screen.

The Judicial Districts of Montana, some of them like the Third having been in existence for over a century, were created conscientiously by previous legislatures to meet the needs of the citizens throughout Montana. With all due respect to the proponents of HB 430, the bill threatens much of what is right with Montana's judiciary.

Sincerely,

Ray J. Dayton
District Court Judge

RJD/smv

Additional Documents
SENATE: Judiciary
Date: 4/8/15
Bill No. HB 477

ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE.

State of Montana, Senate Judiciary Committee
HB 477

Prepared Testimony of Catherine Glenn Foster, Esq.

Alliance Defending Freedom is a non-profit legal organization with offices around the country and internationally. Alliance Defending Freedom represents patients, their family members, and medical and patient advocacy organizations in litigation in courts around the country. Based on this experience and on behalf of our many clients and constituents, I write today to express our legal views regarding this bill.

In *Baxter v. State of Montana*, 354 Mont. 234 (2009), the Montana Supreme Court did find that there is no constitutional right to assisted suicide, but made Montana an outlier in failing to identify any of the reasons physician-assisted suicide runs counter to sound public policy. HB 477 would remedy this by clarifying that doctor-prescribed suicide is contrary to State policy and law. As outlined below and in the attached paper, doctor-prescribed suicide flies in the face of hundreds of years of historical and legal precedent, including that of the State of Montana itself, and puts the very patients it purports to aid, at deadly risk.

In Montana, it is a felony to "purposely aid[] or solicit[] another to commit suicide." Mont. Code. §§ 45-5-102-105. If the assisted suicide results in death, the offense is criminal homicide, even if the victim consented. There is no statutory exception made for doctor-prescribed suicide perpetrated by physicians, though in *Baxter* the Montana Supreme Court ruled that the "Rights of the Terminally Ill Act" grants doctors a consent defense to doctor-prescribed suicide.

Nationally, *Washington v. Glucksberg* held that there is no constitutional right to die. 521 U.S. 702 (1997) (also enumerating the prohibitions or condemnations of assisting in suicide in 50 jurisdictions, including 47 States, the District of Columbia, and 2 Territories, 521 U.S. at 710 n.8). "[E]ven as the States move to protect and promote patients' dignity at the end of life, they remain opposed to physician-assisted suicide." *Vacco v. Quill*, 521 U.S. 793, 805-06 (1997). There is a stark difference between exercising one's right not to undergo unwanted extraordinary

measures and pressing a physician to prescribe a poisonous dose for the purpose of suicide.[1] This State is free to exercise its compelling state interest in protecting vulnerable human life through its civil and criminal laws, as it has done.

Montana is far from alone in prohibiting assisted suicide, and doctor-prescribed suicide. Not all bills have passed, nor have all voter referendums. States from California to Massachusetts have recognized the strong public policy against doctor-prescribed suicide and voted it down. Even in Washington, prescribed-suicide proponents made repeated attempts, starting in 1991, before it passed. New Hampshire overwhelmingly rejected a prescribed-suicide bill last year, with a vote of 219-66. Prescribed suicide is not an idea whose time has come; it is a threat that has failed more than 140 times in more than half the states already this year, even as its advocates try to present "softer, gentler" bills focused on "death with dignity" rather than the grim truth.

Not only is doctor-prescribed suicide a radical departure from deeply held United States laws and norms, it subjects its victims to coercion and far greater pain, as detailed below and in the attached summary, and it sacrifices the conscience rights of physicians at the altar of so-called "humane and dignified" death.

Many terminally ill individuals are frightened, seeking comfort and peace. The State of Montana is committed to providing care and demonstrating empathy. In recent years, Montana's suicide rate has been the highest in the nation, and it is consistently in the top five highest suicide rates.[2] However, Montana has a public policy against suicide, and calls it a "major public health problem" with a "devastating and, often lasting, impact on those that have lost a loved one as a result of suicide."[3] States have recognized the "significant medical and non-medical costs" of suicide and its "physical, emotional, and psychological damage" to patients and their families and friends.[4] "Mental disorders and/or substance abuse have been found in the great majority of people who have died by suicide."[5] Thus the State has implemented state regulations, policies, initiatives, guidance, and resources such as suicide-prevention programs to battle this high

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[1] American Medical Association, Council on Ethical and Judicial Affairs, Decisions Near the End of Life, 267 JAMA 2229, 2230-2231, 2233 (1992) (assisted suicide "is contrary to the prohibition against using the tools of medicine to cause a patient's death").

[2] *See, e.g.*, Karl Rosston, *Suicide in Montana: Facts, Figures, and Formulas for Prevention*, Montana Department of Public Health and Human Services (Oct. 2012) (in 2009, Montana had the highest rate of suicide in the nation; for all age groups, Montana has had one of the top five highest suicide rates for the past thirty years).

[3] *See, e.g.*, http://dphhs.mt.gov/Portals/85/amdd/documents/AMDD%20Website%20Migration%20Documents/StateSuicidePlan.pdf.

[4] *See, e.g.*, http://www.state.nj.us/dcf/documents/behavioral/prevention/preventionplan.pdf.

[5] *See, e.g.*, Maryland State Health Improvement Process, Objective 8 Update Summary (2014).

suicide rate.[6] HB 477 will further Montana's efforts, preventing an increase in suicide rates via a phenomenon known as "suicide contagion."[7]

And as detailed below, doctor-prescribed suicide always carries great dangers and drags down an entire community, for example through suicide contagion and increased rates of elder abuse. There are strong public policy reasons to oppose prescribed suicide generally. The U.S. Supreme Court has repeatedly held that the preservation and protection of life is a legitimate and valuable state interest, and while all lives have intrinsic value, society's most vulnerable members – the elderly, the infirm, and the disabled – are particularly in need of protection. Yet prescribed suicide preys upon the depressed and fearful. Diagnoses and prognoses are shockingly often wrong, and prescribed suicide is no guarantee of peace or a humane and dignified death. When a person commits suicide with the help of a doctor, he has to choke down one of two kinds of barbiturates, bitter drugs that take usually 3-48 hours to kill. Vomiting is common, some patients have regained consciousness after taking the drugs, and 1 in 5 patients don't die from the drugs at all.[8] Put simply, death by doctor-prescribed suicide can be excruciating and humiliating.

In the end, whatever the circumstances and catchphrases employed, doctor-prescribed suicide is not about "choice" or "dignity"; it is definitionally government-endorsed suicide, guided by a trusted medical professional. Indeed, the use of the term "death with dignity" implicitly values purported dignity over life and denigrates the life and death experiences of those who do not opt for suicide in this manner.

In the past several decades, people with disabilities have experienced dramatically improved lives due to groundbreaking new research, trailblazing improvements in care, modern assistive devices, and the continuing eradication of societal misconceptions and reduction of disability discrimination. But doctor-prescribed suicide flies in the face of all the progress that has been made.

The State has a legal duty to provide real options for those approaching the end of their days. Lives are at stake. In a State that is willing to devalue the lives of its poor, poorly educated, dying patients, and especially those who depend on others in some way and are most in need of our care and protection, no one is safe. Patients need hope and compassionate care, not doctor-prescribed death. For all the reasons outlined above, it is sound policy to ban doctor-prescribed suicide.

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[6] *See* http://dphhs mt.gov/amdd/Suicide; http://dphhs.mt.gov/Portals/85/amdd/documents/AMDD%20Website%20Migration%20Documents/StateSuicidePlan.pdf; http://www.co.missoula.mt.us/healthpromo/SuicidePrevention/.

[7] *See below*, "The Problems with Assisted Suicide: Slippery Slope"; Centers for Disease Control and Prevention, Reporting on Suicide: Recommendations for the Media, at 2.

[8] *See, e.g.*, *Euthanasia Deaths "Not Easy,"* BBC NEWS, Feb. 24, 2000; Kenneth Chambaere et al., *Physician-assisted Deaths Under the Euthanasia Law in Belgium*, 182 CAN. MED. ASS'N J. 6 (2010).

Respectfully,

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A General Overview of Doctor-Prescribed Suicide

The medicine, law, and problems associated with doctor-prescribed suicide all strongly counsel against considering it in this State.

The Medicine of Prescribed Suicide

Based on numerous studies, noted bioethicist Ezekiel J. Emanuel, in an opinion piece in the *New York Times*, found that the reason for doctor-prescribed suicide is rarely pain, or even fear of pain. Instead, the reason is typically "depression, hopelessness and fear of loss of autonomy and control. . . . In this light, assisted suicide looks less like a good death in the face of unremitting pain and more like plain old suicide."[9] And both depression and pain can be treated effectively. Yet bills like this one have no psychological screening requirement, only a circular requirement to refer for counseling if the attending physician believes the patient needs counseling. Non-psychiatric physicians do not even believe themselves capable of adequately evaluating the need for counseling. In one study, 94% indicated that they could not determine whether a psychiatric disorder was impairing the judgment of a patient who requested prescribed suicide in a single session.[10]

In 2014 in Oregon, only three patients of the 155 who requested doctor-prescribed suicide were referred for a psychological evaluation.[11] In 2013 in Oregon, only two of the 71 patients who actually committed doctor-prescribed suicide were referred for counseling.[12] In one particularly clear-cut case, a man with a 43-year history of suicide attempts, paranoia, and depression was deemed not to require counseling prior to prescribed suicide.[13]

As psychiatrist and author David D. Burns has said, "Depression has been called the world's number one public health problem. In fact, depression is so widespread it is considered the common cold of psychiatric disturbances. But there is a grim difference between depression and a cold. Depression can kill you."

Decisions to commit doctor-prescribed suicide are equally influenced by misdiagnosis. More than 40% of patients with disorders of consciousness are misdiagnosed.[14] This rate has not

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[9] *See* http://opinionator.blogs.nytimes.com/2012/10/27/four-myths-about-doctor-assisted-suicide/.

[10] *See* L. Ganzini et al., *Attitudes of Oregon Psychiatrists Toward Physician-Assisted Suicide*, 153 AM. J. PSYCHIATRY 1469 (1996); *see also* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1852925/; http://www.cmaj.ca/content/184/4/413.short (discussing screening issues).

[11] *See* http://www healthoregon.org/dwd.

[12] *See* http://public health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year16.pdf.

[13] *See, e.g.*, http://dredf.org/public-policy/assisted-suicide/some-oregon-assisted-suicide-abuses-and-complications/.

[14] *See, e.g.*, Martin M. Monti et al., *Willful Modulation of Brain Activity in Disorders of Consciousness*, 362 NEW ENGLAND J. OF MED. 579 (2010) (noting that the rate of misdiagnosis of disorders of consciousness is approximately

changed despite medical advances over the last 15 years.[15] Overall, it is estimated that up to 15% of diagnoses are incorrect in most areas of medicine.[16]

Too, prognoses are often wrong. Currently, where doctor-prescribed suicide is legal in the US, it requires a six-month terminal prognosis, but many people outlive that. Harvard professor of sociology and medicine Nicholas Christakis agrees that doctors often get terminality wrong in determining eligibility for hospice care.[17] At least 17% of patients outlived their prognosis in a recent study. *See id.* In recognition of this disturbing fact, Arthur Caplan, director of the Center for Bioethics at the University of Pennsylvania, has declared that six months is an arbitrary figure. *See id.* And real-world stories support the claims made by experts in the field:

- Maryanne Clayton, diagnosed with Stage IV lung cancer at age 62, was told by her doctor that she had two to four months to live. She lived four to five more years and had enough time to try groundbreaking treatment methods, which improved her life. She did almost die once, but not by prescription – by a hot air balloon accident. *See id.*
- Dr. J. Randall Curtis recalls a patient suffering from septic shock and multiple organ failure. He thought she would live "days to weeks." *Id.* This same woman recovered and visited him six to eight months later. Dr. Curtis described this as "humbling" and "the kind of thing in medicine that happens frequently." *Id.*
- Dr. Bud Mayer, former Assistant U.S. Secretary of Defense, was diagnosed with pneumonia and congestive heart failure. He had a stroke five years later. He then had a kidney fail a year after that, and was at last diagnosed with angina. Then over seventy-five years old, he gave himself a couple of months at most. His doctor gave him six months and sent him to hospice. But he lived almost two and a half years after all of this,[18] and recalled that even those years of his life were a "wonderful, peaceful" period for him – and he believes it would have been cut short by doctor-prescribed suicide.[19]
- Jeanette Hall, once in favor of doctor-prescribed suicide, testifies to this. After she was diagnosed with cancer, her physician talked her out of taking prescribed-

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40%); K. Andrews et al., *Misdiagnosis of the Vegetative State: Retrospective Study in a Rehabilitation Unit*, 313 BRITISH MED. J. 13 (1996) (finding a 43% misdiagnosis rate, even among long-term patients).

[15] *See* Caroline Schnakers et al., *Diagnostic Accuracy of the Vegetative and Minimally Conscious State: Clinical Consensus Versus Standardized Neurobehavioral Assessment*, 9 BMC NEUROLOGY 35 (2009).

[16] *See* Eta S. Berner & Mark L. Graber, *Overconfidence as a Cause of Diagnostic Error in Medicine*, 121 AM. J. MED. S2 (2008).

[17] *See* Nina Shapiro, *Terminal Uncertainty*, SEATTLE WEEKLY, Jan. 13, 2009, http://www.seattleweekly.com/2009-01-14/news/terminal-uncertainty/.

[18] *See id.*; Bonnie Bartel Latino, *The Late Dr. William E. Mayer Worthy of Being Remembered*, MILITARY WRITERS SOCIETY OF AMERICA, Jan. 1, 2012.

[19] *See* Shapiro, *supra.*

suicide pills; now she says, "I am so happy to be alive!"[20] So far, Jeanette has lived fourteen more years – a life of dignity.

Fewer people would want to hasten their death if they knew just how uncertain doctors really are about prognoses, and what a fatally false premise they're relying on.

The Law of Prescribed Suicide

Doctor-prescribed suicide and euthanasia are legal in just a couple of European countries.[21] Otherwise, it has long been rejected worldwide. The Supreme Court has found that for "over 700 years, the Anglo-American common-law tradition has punished or otherwise disapproved of both suicide and prescribed suicide."[22]

The U.S. Constitution does not provide any right to doctor-prescribed suicide, and there is no federal law on the subject. The two seminal court cases on prescribed suicide were announced on the same day in 1997: *Washington v. Glucksberg*,[23] and *Vacco v. Quill*.[24] Both results were life-affirming.

In *Washington v. Glucksberg*, the Court said a doctor-prescribed suicide ban furthered such compelling state interests as the preservation of human life and the protection of the mentally ill and disabled from medical malpractice and coercion, and prevented those moved to end their lives because of financial or psychological complications. The Court said that if it declared doctor-prescribed suicide a constitutionally protected right, they would start down the path to voluntary and perhaps involuntary euthanasia.

In *Vacco v. Quill*, the Court said there was a legitimate state interest in preventing doctors from assisting in suicide, even for terminally ill patients in great pain. The Court held that the judiciary must look to the Constitution, rather than to the stated "importance" of a right, when determining whether that right is fundamental.

So together, these two cases decided that the government's interest in preserving life and preventing intentional killing outweighs the patient's interest in choosing to die. Thus states may exercise their compelling state interest in protecting vulnerable human life through their civil and

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[20] Jeanette Hall, Letter to the Editor (online), *Assisted Suicide Prompts Some Terminally Ill Patients to Give Up on Life Prematurely*, RAVALLI REPUBLIC, Nov. 28, 2012, 6:15am. http://ravallirepublic.com/news/opinion/mailbag/article_e05fa28b-dd72-5688-a321-654cc86fc213.html.

[21] Euthanasia and/or assisted suicide have been made legal in Belgium, the Netherlands, Luxembourg, and Switzerland.

[22] *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997); *see also id.* at n.9 (Rehnquist opinion)

[23] 521 U.S. 702 (1997) (also enumerating the prohibitions or condemnations of assisted suicide in 50 jurisdictions, including 47 States, the District of Columbia, and 2 Territories, 521 U.S. at 710 n.8).

[24] 521 U.S. 793 (1997).

criminal laws. For hundreds of years, this was expected, and universal. As the Supreme Court said in 1997, "even as the States move to protect and promote patients' dignity at the end of life, they remain opposed to doctor-prescribed suicide."[25]

The vast majority of states have a specific statute in place prohibiting assisting in someone's suicide,[26] even Oregon and Washington – they simply decided to make exceptions for assistance by one particular professional. The courts have almost universally supported these prohibitions. In *Blick v. Office of Div. of Crim. Justice*, patients and their physicians challenged Connecticut's ban on prescribed suicide,[27] but were denied. The court listed numerous compelling policies that motivated its decision, such as: threat to the elderly; utilitarian focus and calculation of the value of human life; integrity of the medical profession and the doctor-patient relationship; and the potential slippery slope once the door to doctor-prescribed suicide is open.[28] The Florida Supreme Court has likewise declined to overextend its power and refused to throw out Florida's ban on prescribed suicide.[29]

The Problems with Prescribed Suicide

The American public is not interested in the bitter reality of so-called "death with dignity." Over 2/3 of U.S. voters oppose doctor-prescribed suicide, according to a New England Journal of Medicine poll.[30] Gallup polling predicates its questions on severe physical pain, skewing the results, but even they have seen support for prescribed suicide drop.[31] Voters are concerned about serious deficiencies, consequences, and dangers, such as the risk of inaccurate diagnoses,[32] a reduction in end-of-life options, the documented broadening of prescribed suicide's application to non-terminal illnesses and conditions, sloppy procedures on the part of

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[25] *Vacco v. Quill*, 521 U.S. 793, 805-06 (1997).
[26] *See* http://www.patientsrightscouncil.org/site/assisted-suicide-state-laws/.
[27] CONN. GEN. STAT. ANN. § 53a-56 (West 1969).
[28] *Blick v. Office of Div. of Crim. Justice*, CV095033392, 2010 WL 2817256, at *10 (Conn. June 2, 2010).
[29] FLA. STAT. ANN. § 782.08 (West 1971).
[30] *See* http://www.nejm.org/doi/full/10.1056/NEJMclde1310667. Gallup polling, in contrast, predicates its questions on severe physical pain, skewing the results. Yet even the Gallup polls have seen support for physician-assisted suicide drop. *See* http://www.gallup.com/poll/162815/support-euthanasia-hinges-described.aspx; *see also* ALEC M. GALLUP & FRANK NEWPORT, EDS., THE GALLUP POLL: PUBLIC OPINION 2004 at 280-81, available at http://books.google.com/books?id=uqqp-sDCjo4C&pg=PA281&lpg=PA281&dq=.
[31] *See* http://www.gallup.com/poll/162815/support-euthanasia-hinges-described.aspx; *see also* ALEC M. GALLUP & FRANK NEWPORT, EDS., THE GALLUP POLL: PUBLIC OPINION 2004 at 280-81, available at http://books.google.com/books?id=uqqp-sDCjo4C&pg=PA281&lpg=PA281&dq=.
[32] More than 40% of patients with disorders of consciousness are misdiagnosed, *see, e.g.*, Martin M. Monti et al., *Willful Modulation of Brain Activity in Disorders of Consciousness*, 362 NEW ENGLAND J. OF MED. 579 (2010) (noting that the rate of misdiagnosis of disorders of consciousness is approximately 40%); K. Andrews et al., *Misdiagnosis of the Vegetative State*, 313 BRITISH MED. J. 13 (1996) (finding a 43% misdiagnosis rate, even among long-term patients). This rate has not changed despite medical advances over the last 15 years. *See* Caroline Schnakers et al., *Diagnostic Accuracy of the Vegetative and Minimally Conscious State*, 9 BMC NEUROLOGY 35 (2009). Overall, it is estimated that up to 15% of diagnoses are incorrect in most areas of medicine. *See* Eta S. Berner & Mark L. Graber, *Overconfidence as a Cause of Diagnostic Error in Medicine*, 121 AM. J. MED. S2 (2008).

doctors, and increased pressure from facilities and families on elder or infirm adults and disabled individuals, particularly those in health care facilities. People are worried that the focus will be on saving money – not saving lives – and worry about the fate of "poor, poorly educated, dying patients who pose a burden to their relatives" – just as Ezekiel Emanuel in the *New York Times* reported are most likely to be abused.[33]

Elder Abuse

Jurisdictions with legalized doctor-prescribed suicide and euthanasia show higher rates of elder abuse.[34] A study conducted by Metlife Insurance identifies elders as prime targets of financial abuse.[35] More than 50% of the culprits are family members. So far, the victims of prescribed suicide have been primarily over 65, educated, well-off, and covered by private insurance, indicating potential material gain for heirs upon their demise. Prescribed suicide only creates broader opportunities for elder exploitation and the abuse of individuals with disabilities. And if public acceptance grows, the fears expressed by Ezekiel Emanuel in the *New York Times* article will be realized as insurance companies reap the savings and prescribed suicide trickles down to those less educated and less well-off. As disability rights advocate Ana Acton recently wrote, "Physician assisted suicide disproportionately affects the poor and people living with disabilities. That explains, at least in part, why there is widespread opposition from virtually every disability rights group in the nation. . . . Assisted suicide doesn't exist in a vacuum . . . ."[36]

Depression

Those suffering from depression need care and treatment. The National Alliance on Mental Illness states that depression affects "one's thoughts, feelings, behavior, mood and physical health."[37] Studies and the Ezekiel Emanuel *New York Times* article say that the reason for doctor-prescribed suicide is rarely pain, or even fear of pain, but "depression, hopelessness and fear of loss of autonomy and control..."[38] – things we can fix. But it is not always easy to do quickly,[39] so those suffering from depression are going unnoticed and untreated. Amidst this

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[33] *See* http://opinionator.blogs.nytimes.com/2012/10/27/four-myths-about-doctor-assisted-suicide/.

[34] Margaret Dore, *"Death with Dignity": A Recipe for Elder Abuse & Homicide (Albeit Not by Name)*, 11 MARQ. ELDER ADVISOR 387, 396 (2010).

[35] *See Broken Trust: Elders, Family, and Finances*, METLIFE MATURE MKT. INST. (2009). https://www.metlife.com/assets/cao/mmi/publications/studies/mmi-study-broken-trust-elders-family-finances.pdf.

[36] Ana Acton, *The Progressive Case Against Assisted Suicide*, HUFFINGTON POST, Aug. 4, 2014. Available at http://www.huffingtonpost.com/ana-acton/the-progressive-case-agai_1_b_5648126.html.

[37] *What is Depression*, NAT'L ALLIANCE ON MENTAL ILLNESS (last accessed July 24, 2014). http://www.nami.org/Template.cfm?Section=depression.

[38] *See* Ezekiel J. Emanuel et al., *Attitudes and Desires Related to Euthanasia and Physician-Assisted Suicide Among Terminally Ill Patients and Their Caregivers*, 284 JOURNAL OF AM. MED. 19 (2000). *Available at* http://jama.jamanetwork.com/article.aspx?articleid=193281#REF-JOC01512-4; *see also* http://opinionator.blogs.nytimes.com/2012/10/27/four-myths-about-doctor-assisted-suicide/.

[39] *See* William Breitbart & Barry D. Rosenfeld, *Physician-Assisted Suicide: The Influence of Psychosocial Issues*, INT'L ASS'N FOR HOSPICE & PALLIATIVE CARE (accessed July 24, 2014). http://hospicecare.com/resources/ethical-

vulnerability they are entrusted with a decision of whether or not they wish to die. Oregon and Washington do require that doctors refer patients who may have psychological impairments to a consulting physician,[40] but overall, fewer than 10% of those requesting suicide drugs have been referred. Again, only 3 of 155 and 2 of 71 patients in Oregon were referred for evaluation.[41] And again, a man with a 43-year history of suicide attempts, paranoia, and depression was given the poison pills.[42] Complaints have been filed against a doctor in Belgium who pressured a depressed woman into prescribed suicide; she died without her son even being able to say farewell.[43] In another case, a physician thought his patient was depressed and unfit for prescribed suicide, but against his judgment, the patient doctor-shopped, got the prescription, and killed himself – the doctor couldn't protect him.[44] In Oregon, one study specifically states that depression as a factor for requesting prescribed suicide is overlooked.[45] There is an inherent conflict of interest between depression and doctor-prescribed suicide. When a patient is suffering from depression, removal of lethal means is central to treating the patient. But the very object of doctor-prescribed suicide is to hand over the gun.[46]

Economic Duress

Individuals facing economic or social duress may well feel pressured into taking the "easy," "cheap" way out. Insurance, physician pressure, and even family members contribute to end-of-life struggles. There are tragic cases of people who have been denied care by their insurance companies, but readily offered coverage for suicide pills, like Barbara Wagner and Randy Stroup under Oregon Medicaid. In Wagner's case, the chemotherapy cost $4000, and the pills only $50.[47] The legalization of doctor-prescribed suicide provides a cheap alternative to palliative care: killing the person. Some patients may be left with suicide as the only financially feasible option.

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issues/essays-and-articles-on-ethics-in-palliative-care/physician-assisted-suicide-the-influence-of-psychosocial-issues/#.

[40] OR. REV. STAT. § 127.825; WASH. REV. CODE. ANN. § 70.245.060.

[41] *See* http://www.healthoregon.org/dwd; http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Documents/year16.pdf.

[42] *See, e.g.*, http://dredf.org/public-policy/assisted-suicide/some-oregon-assisted-suicide-abuses-and-complications/.

[43] *See, e.g.*, Michael Cook, *Official Complaint Lodged Against Leading Belgian Euthanasia Doctor*, BIOEDGE, Feb. 23, 2014. http://www.bioedge.org/index.php/bioethics/bioethics_article/10861.

[44] *See* Dr. Charles J. Bentz, Letter to the Editor, *Oregon Doctor Could Not Save Patient from Assisted Suicide*, MONTANA STANDARD, Jan. 27, 2013 http://mtstandard.com/news/opinion/mailbag/oregon-doctor-could-not-save-patient-from-assisted-suicide/article_a4b605ba-6767-11e2-bf94-0019bb2963f4.html.

[45] *See* Linda Ganzini et al., *Prevalence of Depression and Anxiety in Patients Requesting Aid in Dying: Cross Sectional Survey*, 337 BRITISH MED. J. 1682 (2008). *Available at* http://www.bmj.com/content/337/bmj.a1682 full.

[46] *See, e.g.*, N. Gregory Hamilton & Catherine Hamilton, *Competing Paradigms to Responding to Assisted-Suicide Requests in Oregon: Case Report*, AMERICAN PSYCHIATRIC ASSOCIATION ANNUAL MEETING SYMPOSIUM ON ETHICS AND END-OF-LIFE CARE: NEW INSIGHTS AND CHALLENGES, (May 6, 2004). *Available at* http://www.pccef.org/articles/art28 htm.

[47] *See* Ken Stevens, MD, Aff *Available at* http://maasdocuments.files.wordpress.com/2012/09/signed-stevens-aff-9-18-12.pdf

Social

There are also social pressures that can contribute to a person's desire to end their life. A majority of people facing terminal illness feel lonely. They feel like they are a burden on their family and caretakers. When their doctor is offering a way out, the pressure mounts.

Slippery Slope

When it comes to doctor-prescribed suicide, the concerns are real. Those states and foreign countries that have legalized prescribed suicide have seen an enormous increase in deaths by suicide. Prescribed suicide rates go up, for whatever reason, and regular suicide rates go up, too, in a phenomenon known as "suicide contagion."[48] One year in Washington, 12% of doctors received a request for prescribed suicide, and 4% for euthanasia. Again, the patient concerns most often perceived by physicians were worries about loss of control, being a burden, being dependent on others for personal care, and loss of dignity. And only rarely did doctors consult with each other on these cases.[49]

Many cases are going unreported, a major concern for accountability.[50] Doctor-prescribed suicide causes a desensitization and insensitivity for the plight of the infirm.[51] And of those countries that have legalized it, prescribed suicide for purely physical suffering has been extended to psychological and emotional suffering.[52]

Even more disturbing is that in Belgium half the people are being euthanized without an explicit request.[53] Dr. Peter Saunders has observed that "[i]t is widely acknowledged that

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[48] *A Deadly Conflict of Interest*, EUTHANASIA PREVENTION COALITION, Nov. 25, 2013 (stating that there has been a 500% increase in euthanasia cases in Belgium in ten years); http://www.epce.eu/en/a-deadly-conflict-of-interest/; *Euthanasia Requests Rose in 2012*, DUTCH NEWS, Sep. 24, 2013 (finding that euthanasia rose by 13% in the Netherlands) http://www.dutchnews.nl/news/archives/2013/09/euthanasia_requests_rose_in_20.php; *Death with Dignity Act-2013*, OR. PUB. HEALTH DEP'T (last visited July 23, 2014) (indicating that over the last 16 years, assisted suicide has risen, with a record high in 2012; as of 2013, rates had slightly declined, but not all reports were available at the time of publishing) http://public health.oregon.gov/ProviderPartnerResources/Evaluationresearch/deathwithdignityact/Pages/index.aspx.

[49] http://jama.jamanetwork.com/article.aspx?articleid=399087.

[50] *See* Bregje D. Onwuteaka-Philipsen et al., *Trends in End-of-Life Practices Before and After the Enactment of the Euthanasia Law in the Netherlands from 1990 to 2010: A Repeated Cross-sectional Survey*, THE LANCET, Tbl. 4 (published online July 11, 2012) http://press.thelancet.com/netherlands_euthanasia.pdf.

[51] *See, e.g.*, Ezekiel J. Emanuel, *Whose Right to Die?*, THE ATLANTIC, Mar. 1, 1997, 12:00pm (dispelling many of the myths about assisted suicide, long before the practice was internationally prevalent). http://www.theatlantic.com/magazine/archive/1997/03/whose-right-to-die/304641/?single_page=true.

[52] *See, e.g.*, *supra*; Bruno Waterfield, *Belgian Killed by Euthanasia After a Botched Sex Change Operation*, THE TELEGRAPH, Oct. 1, 2013 http://www.telegraph.co.uk/news/worldnews/europe/belgium/10346616/Belgian-killed-by-euthanasia-after-a-botched-sex-change-operation.html.

[53] *See, e.g.*, Tinne Smets et al., *Reporting of Euthanasia in Medical Practice in Flanders, Belgium: Cross Sectional Analysis of Reported and Unreported Cases*, 341 BRITISH MED. J. 5174 (2010) (finding that only fifty percent of cases of euthanasia are actually reported in Flanders). *Available at*

euthanasia is out of control in Belgium." There's been "a 500% increase in cases in ten years; one third involuntary; half not reported; euthanasia for blindness, anorexia and botched sex change operations; organ transplant euthanasia; … euthanasia [for] children and people with dementia." "[I]t is clear that in practice the boundaries are continually migrating and the nation's moral conscience is shifting year on year. Call it incremental extension, mission creep or slippery slope – whatever – it is strongly in evidence in Belgium."[54] All this has led one Belgian former proponent of prescribed suicide to recant his former position, lamenting at the fact that the sick and disabled are being marginalized by doctor-prescribed suicide.[55]

There are also reported cases of individuals who have been killed without having any underlying symptoms, where the doctor simply made an "error."[56] One Swiss autopsy found that the diagnosis that led the patient to choose suicide was wrong. For three Oregon prescribed suicide victims, the annual report doesn't seem to know what was wrong with them.

Inadequate Protections

The protections in place in each state where doctor-prescribed suicide has been legalized are wholly inadequate. Current laws generally require that there be witnesses at the time the patient requests the pills, but when the patient actually takes them, there may be no witnesses[57] or consent, and there's no way to be sure it's actually the patient choosing to take them or administering the poison. The doctor is only there about 7% of the time.[58] Prescribed suicide expert Margaret Dore talks about the possibility that someone who receives a dose in accordance

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http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2950259/pdf/bmj.c5174.pdf.

[54] Dave Andrusko, *Netherlands and Belgium: What Lies at the Bottom of the Slippery Slope*, NATIONAL RIGHT TO LIFE NEWS TODAY, Apr. 23, 2014 Available at http://www nationalrighttolifenews.org/news/2014/04/netherlands-and-belgium-what-lies-at-the-bottom-of-the-slippery-slope/; *Euthanasia Requests Rose in* 2012, DUTCH NEWS, Sep. 24, 2013 (stating that two cases involving dementia were being investigated to determine if there was actually informed consent); http://www.dutchnews.nl/news/archives/2013/09/euthanasia_requests_rose_in_20.php; *Children's Euthanasia Bill Signed by Belgian King*, RUSSIA TODAY, published Mar. 03, 2014, 3:14pm, edited Mar. 5, 2014, 11:54am. http://rt.com/news/belgium-king-sign-euthanasia-bill-566/.

[55] *See* Steve Doughty, *Don't Make Our Mistake: As Assisted Suicide Bill Goes to Lords, Dutch Watchdog Who Once Backed Euthanasia Warns UK of 'Slippery Slope' to Mass Deaths*, DAILY MAIL, July 9, 2014, 5:40pm EST, updated July 10, 2014, 3:44am EST. http://www.dailymail.co.uk/news/article-2686711/Dont-make-mistake-As-assisted-suicide-bill-goes-Lords-Dutch-regulator-backed-euthanasia-warns-Britain-leads-mass-killing html?ITO=1490&ns_mchannel=rss&ns_campaign=1490.

[56] Malcolm Curtis, *Doctor Acquitted for Aiding Senior's Suicide*, THE LOCAL, published Apr. 24, 2014, 10:19 GMT +2:00 (reporting that the doctor was ultimately not held accountable for his negligence) http://www.thelocal.ch/20140424/swiss-doctor-acquitted-for-aiding-seniors-suicide.

[57] *See* WASH. REV. CODE. ANN. §§ 70.245.010-904 (West 2009); OR. REV. STAT. §§ 127.800-897 (containing only a "suggestion" that the doctor "remind" the patient of the importance of having another person present when she takes the medication)

[58] *See* PATIENTS RIGHTS COUNCIL, REPORTED ASSISTED-SUICIDE DEATHS IN OREGON & WASHINGTON STATE, www.patientsrightscouncil.org, April, 2010. http://www.patientsrightscouncil.org/site/wp-content/uploads/2011/02/OR_WA_Reported_Deaths_04_10.pdf.

with the statutory requirements then becomes incompetent or falls asleep—a situation ripe for abuse. Nonetheless, Vermont may face a sunsetting of its meager protections as soon as next year, despite a strong push to repeal prescribed suicide in Vermont generally. Many of the same inadequacies in the other doctor-prescribed suicide laws and bills are repeated here.

Conscience Rights

Physicians are concerned about doctor-prescribed suicide as a threat to their profession and to their conscience. Doctor-prescribed suicide laws and bills contain at best only the most limited conscience protection for doctors to avoid coercive or mandatory participation in death[59] – the same healing professionals who have sworn to "first do no harm." In fact, most versions of the Hippocratic Oath have physicians swear, "I will give no deadly medicine to any one if asked, nor suggest any such counsel."[60] Prescribing fatal medication with the express intent to kill flies in the face of that duty. The integrity of the profession depends on its ability to utilize the best practices, with the best information, to promote patient well-being. In contrast, prescribed suicide is fraught with uncertainty (like about terminal diagnoses) and risk. Some prescribed-suicide bills would even press physicians to equivocate on death certificates by citing an underlying terminal disease as a prescribed suicide victim's cause of death

The U.S. Supreme Court has stated that the government undoubtedly "has an interest in protecting the integrity and ethics of the medical profession."[61] And so, as expressed by Justice Scalia in his *Gonzalez v. Oregon* dissent:

> "Virtually every relevant source of authoritative meaning confirms that the phrase 'legitimate medical purpose' does not include intentionally assisting suicide. 'Medicine' refers to '[t]he science and art dealing with the prevention, cure, or alleviation of disease.' WEBSTER'S SECOND 1527. . . . [T]he AMA has determined that '[p]hysician-assisted suicide is fundamentally incompatible with the physician's role as healer.' '[T]he

[59] Our nation's Constitution and statutes protect against coercing physicians to prescribe lethal drugs and fulfill the "assisting" part of "assisted suicide." The First Amendment's Free Exercise Clause provides that "Congress shall make no law … prohibiting the free exercise of religion," and court cases such as *Chrisman v. Sisters of St. Joseph of Peace* and *Taylor v. St. Vincent's Hospital* have recognized that the freedom of religion includes that of those who respect life. The Church Amendments provide that recipients of federal healthcare funding can't require employees to take a life, or discriminate based on an employee's refusal; the Church Amendment passed 372/1 in the House and 92/1 in the Senate, and supporter Sen. Ted Kennedy proclaimed: "I believe that the Court will sustain the judgment to protect individual rights and liberties." As the U.S. Congress stated, in passing the Religious Freedom Restoration Act and restoring the compelling interest test to laws that substantially burden religion, "the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution." 42 U.S.C. § 2000bb(a). Numerous state laws provide similar protections, but this bill does not.

[60] Peter Tyson, *The Hippocratic Oath Today*, NOVA, Mar. 27, 2001.

[61] *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997).

> overwhelming weight of authority in judicial decisions, the past and present policies of nearly all of the States and of the Federal Government, and the clear, firm and unequivocal views of the leading associations within the American medical and nursing professions, establish that assisting in suicide . . . is not a legitimate medical purpose.'"[62]

The physician cannot both heal and take life. As far as the American Medical Association is concerned, doctor-prescribed suicide is "fundamentally inconsistent with the physician's professional role" as a healer.[63]

This is even true in Switzerland. A new study from the Swiss Academy of Sciences finds that although most of the doctors polled approved of doctor-prescribed suicide, most were unwilling to actually do it – only 111/1318 had, even though as is typical, the Swiss doctor is not expected to be present at the actual time of death (that grim task is done by prescribed-suicide groups).

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[62] *Gonzales v. Oregon*, 546 U.S. 243, 285-86 (2006) (Scalia, J., dissenting) (internal citations omitted).
[63] HEALTH AND ETHICS POLICIES OF THE AM. MED. ASS'N HOUSE OF DELEGATES § H-140.952 (2009). *Available at* http://tinyurl.com/AMAH140-952.